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2010 FEB 22 A 9:09

PUBLIC UTILITIES
COMMISSION

February 20, 2010

Ms. Stacey K. Djou
General Counsel
Public Utilities Commission
465 South King Street
Honolulu, Hawaii

Re: Docket No. 2005-0315
Hawaii Electric and Light Company
(Application for Rate Increase and
Revised Rate Schedules)

Dear Ms. Djou:

I am writing on behalf of the Keahole Defense Coalition (KDC) with the authorization of its president, Keichi Ikeda. KDC is a participant in this docket and is concerned over the Commission's delay in rendering a final decision on the Company's application. Since the date of the interim rate increase (Order No. 23342, April 4, 2007), the Company has enjoyed the benefit of the interim increase for nearly three years. Meanwhile, many ratepayers who have paid the interim rates no longer live or own businesses in the Company's service area.

Section 269-16(d), HRS contains what the legislature characterizes as a "mandate" for the Commission to render a final decision on the Company's application "before nine months" of the Company's completed application.¹ Although the statute suggests that the Commission could render a final decision

¹ "[I]n carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedules that it establishes" (emphasis added) The Company, Consumer Advocate and KDC all complied with the Commission's time schedule in this docket.

after the nine-month period (if it files a report with the legislation explaining the reason for deviating from the nine-month period),² questions remain as to

- Whether the legislature must review and approve a delayed decision (rendered after the nine-month period) before the delayed decision can take effect;³
- Whether the legislature's review and action on the delayed decision is part of the agency record;
- Whether such a delayed decision unfairly prejudices the interests of the Company's ratepayers and the public at large;
- The time when the delayed decision become "final" for purposes of appeal.⁴

In *Town v. Land Use Commission*, 55 Haw. 538, 542-545 (1974), the Hawaii Supreme Court held that the agency lost jurisdiction over an application when the agency failed to render its decision on the application within the legislatively mandated time period. In *Perry v. Planning Commission*, 62 Haw. 666, 675-678 (19), the court set forth additional factors for consideration where delayed agency action is present.⁵

² "If a decision is rendered after the nine-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the decision." (emphasis added)

³ Under Section 91-13.5(f), HRS, the Company's application is not deemed approved as a result of delayed agency action.

⁴ Under Sections 269-15 and 269-15.5, HRS, an appeal lies from the Commission's "final order."

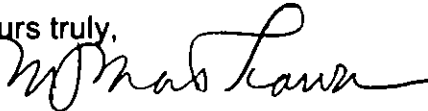
⁵ These factors include fairness and due process, essence of time, provisions that negate agency jurisdiction, injury to public or private rights, benefits and advantages gained or lost. In this instance, as part of its nine-month "mandate," the legislature has demanded "expeditious" agency action, Section 269-16(d), HRS, and "fairness" and "due process" to all participants in an agency proceeding, Section 269-16(a), HRS.

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As you know, the Company has filed another application for a rate increase, Docket No. 2009-0164, even though this current docket (Docket No. 2005-0315) and another docket (Docket No. 2009-0321) remain open, pending final agency action.

I am aware that as the Commission's counsel, you are not in a position to provide advice to KDC or others as to the matter raised in this letter. However, I felt it proper to inform you of KDC's concern over the delayed decision and am requesting the Consumer Advocate to take appropriate action, failing which KDC may seek such relief as may be available to resolve its concern. Thank you very much.

Yours truly,

A handwritten signature in black ink, appearing to read "Michael J. Matsukawa", written in a cursive style.

Michael J. Matsukawa

c: Dean Matsuura, HECO
Peter Kikuta, Counsel for HECO
Dean Nishina, Consumer Advocate